IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2780 OF 2001
IN
SUIT NO.2782 OF 2001

Parasuram A. Kolte Plaintiff

versus

Smt.Prema wd/o. Kashiram A. Kolte
and others Defendants

Mr.R.R.Sharma for plaintiff.

None for defendants

CORAM : S.C.DHARMADHIKARI, J.

DATE : 17th June 2005

PC :

1. Heard Shri Sharma for plaintiff. This motion had appeared on the last occasion. Mr.K.K.V.Kurup who has filed appearance for the defendants, was absent on that date. I had adjourned the matter to give one opportunity to the defendants' advocate to remain present and argue the notice of motion. Mr.Sharma was directed to give a notice of today's hearing to Mr.Kurup. Mr.Sharma states that due intimation has been given of today's hearing and despite receiving a notice in that behalf, Mr.Kurup has

remained absent. The opportunity given by me is in the light of order passed on 7th June 2004 recording that no affidavit-in-reply is filed to the notice of motion. This Court noted in this order that no affidavit in reply is filed despite the fact that written statement of defendants 1 to 4 is on record.

2. The notice of motion is taken out in a suit for declaration that the property which is more particularly described in para no.2 of the plaint and plan (Exhibit-A thereto) is an ancestral property and the plaintiff as well as defendants 1 to 5 are entitled to 1/3rd undivided share therein. On this basis, the relief of partition by meets and bounds is also claimed.

3. Mr.Sharma contends that this property was initially an open piece of land in which the the predecessor-in-title of the plaintiff and defendants 1 to 5 Atmaram Kolte was a tenant. The said Atmaram Kolte constructed a structure thereon and it is occupied by the present plaintiff and the defendants 1 to 5 and their family members. In a portion of this structure tenancy rights have been created in favour of some 42 persons. The contention of Mr.Sharma is

that despite repeated requests, the defendants 1 to 4 are not giving details nor rendering accounts of the income from the suit property. Consequently it is not possible to ascertain the exact amount to which the plaintiff and defendants would be entitled to. He submits that there is a serious apprehension in the minds of the plaintiff and defendant no.5 that the property (tenancy created therein) would be dealt with to the detriment of the plaintiff and other defendants' rights. No account having been furnished by way of income or rent etc. the apprehension is that the defendants 1 to 4 under the garb of claiming the property to be exclusively belonging to one Kashiram Kolte, would transfer tenancies by accepting surrender of rights by the existing tenants. For preventing all this and for preserving the subject matter of the suit, it is necessary that appropriate interim orders be passed.

4. Mr.Sharma presses for appointment of Receiver. However, in my view, the affidavit in support does not set out as to how it is just and convenient to have a Court Receiver in this property when admittedly plaintiff and defendants are occupying the structures. All that can be

done is to safeguard the interest of parties therein. That purpose can be achieved by appropriate interim injunction.

5. In the light of the above, notice of motion is made absolute in terms of prayer clause (c). Notice of motion is made absolute in terms of prayer clause (c). Costs in the cause.

(S.C.DHARMADHIKARI, J.)